Supreme Court, U.S.
FILED

(1)

02 10 20 DEC 30 2002

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

PROFESSOR ROBERT HORTON,

Petitioner,

v.

CITY COLLEGES OF CHICAGO,
(Board of Trustees of Community
College District No. 508)

Respondent.

On Petition for a Writ of Certiorari
To The Appellate Court of Illinois
First Judicial District, Fifth Division

PETITION FOR A WRIT OF CERTIORARI

Professor Robert Horton
5855 N. Sheridan Rd., Apt. 21H
Chicago, Illinois 60660-3847
(773) 561-6671
Petitioner Pro se

59 pp

QUESTIONS PRESENTED

(1) Whether the lower courts can overrule and preempt the Retirement Board's already final and binding decisions?

(2) Whether the lower court rulings here are contrary to the Marbury v. Madison case of 1803?

(3) Whether an employer can override the Retirement Board's final and binding decisions?

(4) Whether an employer can authorize an employee to stay home and defraud the taxpayers to cover-up its own mistake and wrongdoing?

(5) Whether it was contrary to SURS June 7, 1990 final and binding decision for Petitioner not to return to work after disability ceased?

(6) Whether the Retirement Board had a fiduciary obligation to the taxpayers to enforce its June 7, 1990 final and binding decision to stop this fraud?

(7) Whether Petitioner was morally and legally obligated to take action to stop this fraud and return to work after the Retirement Board had failed to do so?

(8) Whether the lower courts can ignore $97,727.15 of fraud for 6-years in this case?

LIST OF PARTIES

The name of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

ARGUMENT:

A. The lower court rulings are contrary to the Marbury v. Madison case of 1803 7

B. The lower courts erred by ruling under Illinois law that Petitioner's date of termination occurred on November 4, 1993, instead of April 30, 1999 8

C. The lower courts erred by ruling that Petitioner's complaint is barred by the one-year statute of limitations provided in 745 ILCS 10/8-101 11

D. The lower courts erred by ignoring that SURS June 7, 1990 final and binding decision mandated Petitioner's employment 12

E. The lower courts erred by ignoring the Respondent's 6-year fraudulent scheme against the taxpayers to cover-up its own mistake and wrongdoing 14

F. The Respondent should be equitably estopped from even asserting the statute limitations 16

CONCLUSION 18

INDEX OF APPENDICES

APPENDIX A:

Judgment and Order of the Appellate Court of Illinois, First Judicial District, Fifth Division entered May 10, 2002 ..... 1a

APPENDIX B:

Judgment and Order of the Circuit Court of Cook County, Illinois, County Department, Law Division entered March 22, 2001 ..... 1b

APPENDIX C:

Order of the Supreme Court of Illinois denying Petition for Leave to Appeal entered October 2, 2002.....1c

APPENDIX D:

SURS June 7, 1990 final and binding decision approving Petitioner's Disability Claim.....1d

APPENDIX E:

SURS September 30, 1999 decision approving Petitioner's Finalized Retirement Claim..... 1e

APPENDIX F:

SURS October 28, 1999 final and binding decision approving Petitioner's Revised Retirement Claim 1f

TABLE OF AUTHORITIES

SURS June 7, 1990 final and binding decision.....11-14,16

SURS September 30, 1999 decision 9,10,11

SURS October 28, 1999 final and binding decision.....9,10

Marbury v. Madison, (1803).....7,8,14

United States v. Howard, 352 US 212 (1956) 12

Tegeler v. Industrial Commission,
173 Ill. 2d 498 (1996) 16

Cessna v. Montgomery,
63 Ill. 2d 71 (1996) 16

Lucey v. Law Offices of Pretzel & Stouffer,
301 Ill. App. 3d 349, 703 N.E. 2d 473 (1998).....12

Kramer v. Dirksen,
296 Ill. App. 3d 819, N.E. 2d 1288 (1998).....12

STATUTES:

28 U.S.C. § 1257(a) 1

40 ILCS 5/15-107(e)(3)..... 1, 11,13

40 ILCS 5/15-186 FRAUD..... 1,15

745 ILCS 10/8-101..... 2,11,12

No.

IN THE

SUPREME COURT OF THE UNITED STATES

PROFESSOR ROBERT HORTON,

Petitioner,

v.

CITY COLLEGES OF CHICAGO,
(Board of Trustees of Community
College District No. 508)

Respondent.

On Petition for a Writ of Certiorari
To The Appellate Court of Illinois
First Judicial District, Fifth Division

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Prof Robert Horton, pro se, respectfully petitions for a writ of certiorari to review the judgment of the Appellate Court of Illinois.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois, First Judicial District, Fifth Division is unpublished, (Appendix A). The decision of the Circuit Court of Cook County, Illinois, County Department, Law Division is unpublished, (Appendix B).

STATEMENT OF JURISDICTION

The judgment and order of the Appellate Court of Illinois was entered on May 10, 2002. Petitioner filed a timely Petition for Leave to Appeal on June 14, 2002; which was denied by the Supreme Court of Illinois on October 2, 2002. This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

40 ILCS 5/15-107(e)(3):

A participant is considered an employee during the period he or she receives disability benefits under provisions of Section 15-152. (West 2000)

40 ILCS 5/15-186 Fraud:

Any person who knowingly makes any false statement, or falsifies or permits to be falsified any record or records of this system, in any attempt to defraud the system, is guilty of a Class A misdemeanor. (West 2000)

745 ILCS 10/8-101:

No civil action may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued. For purposes of this Article, the term "civil action" includes any action, whether based upon the common law or statutes or Constitution of this State. (West 2000)

STATEMENT OF THE CASE

On September 5, 1989, Plaintiff began a one-year approved medical leave granted by the Defendant City Colleges of Chicago (CCC). Plaintiff's accumulated sick days were exhausted on March 21, 1990. And before the one-year approved medical leave expired and the academic year 1989-90 ended on May 12, 1990. On March 1, 1990, Plaintiff submitted an application for disability benefits with the State Universities Retirement System of Illinois (SURS). SURS issued its decision on June 7, 1990 approving Plaintiff's Disability Claim with the disability benefits being retroactive to April 6, 1990. (R. C24-26) On May 11, 1992, the Defendant began calling and writing Plaintiff with threats of termination. The Defendant was alleging that Plaintiff had already been A.W.O.L. from work since May 9, 1992, and must return to work immediately or be fired. Plaintiff then conferred with SURS and was told to just ignore CCC. SURS stated that Plaintiff was now under its jurisdiction until approved and released by the attending physician to return to work. And that Plaintiff's employment was indeed protected by SURS June 7, 1990 decision during Certification for

disability benefits. However, CCC continued with its threats and harassment for the next 18 months. (R. C6)

On November 4, 1993, Plaintiff received a notice of termination from CCC and effective on that same date. Plaintiff called SURS on November 4, 1993 and was told that CCC probably made a clerical error or someone had made a major blunder. Because it was legally impossible to terminate Plaintiff's employment while receiving disability benefits under SURS' jurisdiction. SURS then promised to resolve this issue promptly. (R. C6-7, 30-34) SURS later stated that its hands were tied and urged Plaintiff to go to his Union and the U.S. Equal Employment Opportunity Commission (EEOC) against CCC. And to seek relief to resolve Plaintiff's employment status under Americans with Disabilities Act of 1990 (ADA) and/or Title VII of the Civil Rights Act of 1964 (Title (VII). (R. C7) Plaintiff then filed a claim against CCC with both the Union and the EEOC. Both failed to resolve plaintiff's employment status after more than one year. On January 31, 1995, the EEOC provided Plaintiff with a "right to sue letter" against CCC under the ADA and Title VII claims. (R. C7)

On April 18, 1995, Plaintiff filed a complaint against CCC in the U.S. District Court pursuant to the EEOC's right to sue letter. Plaintiff was provided a standardized federal complaint format for a Pro se filing under Title VII. Plaintiff then added 6-paraghraphs that included two Illinois state claims for the violation of an Administrative Decision that was issued by an Administrative Board and for the violation of a Collective Bargaining Agreement, along with Plaintiff's $2010.25 Monetary Dispute Claim.

(R. C183-184) On May 15, 1996, the U.S. District Court granted summary judgment to the Defendant on all counts. And ruled against the violation of Illinois Pension Code which was not alleged in the complaint itself, instead of ruling on the violation of an Administrative Decision that was issued by an Administrative Board. (R. C146-163). On February 7, 1997, the U.S. Appellate Court affirmed the judgment of the U.S. District Court. (R. C164-166) On May 28, 1997, Plaintiff wrote each justice of the U. S. Supreme Court. Plaintiff informed this Court that the U.S. District Court and the U.S. Appellate Court had now rendered a judgment that was contrary to a decision that was already issued by the Retirement Board. And that Plaintiff was now being forced to stay home and defraud the Retirement System and the taxpayers of Illinois. (R. C60-61) On June 12, 1997, Plaintiff was advised that the U.S. Supreme Court lacked jurisdiction to intervene unless cases or controversies were properly brought before it from lower courts. (R. C80) Plaintiff also requested Members of the U.S. Congress and the Illinois State Legislature to intervene to prevent any additional fraud against the taxpayers of Illinois. (R. C58-59) Plaintiff was advised by some lawmakers to just file again in the state court. While some lawmakers urged Plaintiff to go Public with this fraud and report it to the proper criminal authorities, including the FBI and the U.S. Justice Department.

On June 2, 1998, Plaintiff filed a complaint against SURS to force SURS to enforce its June 7, 1990 final and binding decision against CCC in order to end this fraud and return to work. This case was dismissed in the Circuit Court of Cook County under Rule 2-619 for lack of subject matter

jurisdiction. (R. C11-12) On March 3, 1999, Plaintiff was notified by SURS that his disability benefits would expire on April 21, 1999. And that Plaintiff had now met the minimum service requirement to qualify for retirement annuity. SURS indicated that Plaintiff would have 22.00 years of service credit and a monthly benefit of approximately $1,300 could begin on May 1, 1999 and would be payable for the remainder of lifetime. (R. C36-37) On April 30, 1999, Plaintiff completed his Application for the Retirement Annuity. (R. C38-41) On June 22, 1999, Plaintiff was notified that his Application for Retirement Annuity had been received and was being processed. (R. C42-44) On October 4, 1999, Plaintiff received his "Finalized Retirement Claim" from SURS that was dated September 30, 1999. This Claim shows 22.0000 years of service credits and a $1,241.00 monthly annuity based on an average earnings of $32,655.11 per year. (R. C47-51) On October 5, 1999, Plaintiff phoned SURS and inquired how the Finalized Retirement Claim was calculated. SURS stated that it had used CCC's Termination Report to calculate this Claim as mandated by SURS law. Plaintiff then requested a copy of CCC's Termination Report. Plaintiff received CCC's Termination Report from SURS on October 15, 1999 that was stamped received August 26,1999 by SURS. (R. C45-46) On November 9, 1999, Plaintiff received his "Revised Retirement Claim" from SURS that was dated October 28, 1999 and metered postmark on November 5, 1999. This Revised Claim is now showing 21.7500 years of service credits and a $1,302.12 monthly annuity based on an average earnings of $32,655.11 per year. (R. C54-56)

On September 19, 2000, Plaintiff filed suit in the Circuit Court of Cook County alleging, inter alia, intentional torts, fraud, and the violation of state laws against the Defendant City Colleges of Chicago upon receiving new evidence from the Retirement Board that certified an actual date of termination for April 30, 1999, instead of November 4, 1993. (R. C3-85) On November 6, 2000, the Defendant filed a motion to dismiss based on prior judgment. (R. C90-116) The Defendant then filed a routine motion on November 30, 2000 to vacate technical defaults and for leave to file an answer or otherwise plead. (R. C117-118) That motion was granted by judge Kathy M. Flanagan on November 30, 2000. (R. C128) On November 30, 2000, Plaintiff filed a regular motion to advance for trial. (R. C119-127) That motion was heard by Judge Randye A. Kogan on December 13, 2000 and ruled to expedite the case by transferring it to a Commercial Calendar. (R. C129) On December 27, 2000, the Defendant filed another motion to dismiss based on failure to state cause of action, action barred by prior judgment under the doctrine of res judicata, and action not commenced within time limited by law. (R. C130-169) On February 20, 2001, Plaintiff filed response to Defendant's motion to dismiss based on failure to state cause of action, action barred by prior judgment under the doctrine of res judicata, and action not commenced within time limited by law. (R. C171-185) And on March 2, 2001, the Defendant filed reply to Plaintiff's response to the motion to dismiss. (R. C186-189) On March 22, 2001, Judge Loretta C. Douglas granted Defendant's motion to dismiss based on the one-year statute of limitations provided in 745 ILCS 10/8-101, and dismissed with prejudice Plaintiff's complaint. (R. C191-195) On April 20, 2001, Plaintiff filed a Notice of Appeal

with the Illinois Appellate Court. (R. C196-198) And on May 10, 2002, the Illinois Appellate Court affirmed the trial court's decision. On June 14, 2002, Petitioner filed a Petition for Leave to Appeal with the Illinois Supreme Court. And on October 2, 2002, the Illinois Supreme Court denied the petition.

REASONS FOR GRANTING THE WRIT

A. THE LOWER COURT RULINGS ARE CONTRARY TO THE *MARBURY v. MADISON* CASE OF 1803.

Chief Justice John Marshall ruled in the famous *Marbury v. Madison* case of 1803 that the Constitution intended only for the judiciary to have the **"last power"** to determine the finality of any law through the power of judicial review. And for 200-years the courts have always followed that interpretation of the Constitution. Moreover. American entire legal system is based upon Chief Justice Marshall's concept of judicial review. **However, in this case the lower courts have departed entirely from the principles of judicial review mandated by the Constitution in the *Marbury v. Madison* case.** The lower courts ignored and then overruled and preempted SURS June 7, 1990 already final and binding decision, despite the statute of limitations having been expired. The lower courts also ignored and then overruled and preempted SURS October 28, 1999 already final and binding decision, despite the statute of limitations having been expired again. Petitioner believes that the lower courts **"lacked**

jurisdiction" to overrule and preempt the Retirement Board's already final and binding decisions after the statute of limitations had expired. Instead, the lower courts were mandated by the Constitution to enforce the Board's final and binding decisions.

Chief Justice John Marshall stated in *Marbury v. Madison* that **"the courts of the United States are bound to take notice of the Constitution."** In the present case, the Constitution **mandated** that the Rules of the Retirement Board's final and binding decisions to be the law, instead of the Rules of the Respondent that was ruled for by the lower courts. Therefore, this ruling is **"repugnant"** to the Constitution, and must be voided. **Such a legal precedent would allow a party to subvert a final and binding judicial decision, and would thus undermine the Constitution and undo American entire legal system.** And it would then put all disabled employees at great risk with the loss of all benefits including health care and medical treatments, despite the approval of a disability claim. Petitioner believes that **public policy** should prevail in this case, despite the statute of limitations being asserted by the Respondent.

B. THE LOWER COURTS ERRED BY RULING UNDER ILLINOIS LAW THAT PETITIONER'S DATE OF TERMINATION OCCURRED ON NOVEMBER 4, 1993, INSTEAD OF APRIL 30, 1999.

Petitioner believes that a termination of employment under Illinois law and the Illinois Pension Code is **not valid or effective** until the Retirement Board has recognized and certified the date of termination.

Because SURS law under Illinois Pension Code **mandates** a terminated employee must exit out of both the employment system and the retirement system on the very same date of termination. And that participation along with service credits must cease on the date of termination. (R. C35) Therefore, Petitioner believes that under Illinois law and the Illinois Pension Code it was simply **"legally impossible"** (mutually exclusive) to terminate Petitioner's employment on November 4, 1993 while still receiving disability benefits and service credits concurrently from SURS. Petitioner now believes that the **"new evidence"** proves conclusively that under Illinois law and the Illinois Pension Code that Petitioner's employment was never terminated until actually April 30, 1999, instead of November 4, 1993.

Petitioner submitted an Application for Retirement Annuity that provided a date of termination for April 30, 1999. (R. C38) And this is the very same date that SURS concurred with and then certified for both its September 30, 1999 decision and October 28, 1999 decision approving Petitioner's Finalized Retirement Claim and the Revised Retirement Claim respectively. And then provided Petitioner with 22.0000 and 21.7500 years of service credits respectively on each Claim with Petitioner's employment beginning on August 24, 1977 (R. C47-51, 54-56) **On the contrary,** a date of termination for November 4, 1993 would have only provided about 16.0000 years of service credits from SURS under Illinois law. Thereafter, the Respondent submitted a Termination Report that showed an actual date of termination for November 4, 1993. However, the Respondent's Termination Report and its November 4, 1993 termination date was rejected by SURS

until the Respondent corrected and changed its November 4, 1993 termination date to April 30, 1999. The Respondent lined through its November 4, 1993 termination date and then manually wrote April 30, 1999. (R. C45) And the very same termination date that Petitioner had already provided for Retirement Annuity that was concurred with and certified by SURS. (R. C38)

Petitioner strongly believes that under Illinois law and the Illinois Pension Code that the April 30, 1999 termination date is now **"the law"** and cannot be changed again. Because the statute of limitations had already expired on both SURS September 30, 1999 decision and SURS October 28, 1999 decision approving Petitioner's Finalized Retirement Claim and the Revised Retirement Claim respectively and **SURS' own certified date of termination for April 30, 1999.** (R. C.47-51, 54-56) However, each lower court still ruled that Petitioner's employment was terminated on November 4, 1993. And is contrary to SURS October 28, 1999 already final and binding decision. Petitioner believes that the lower courts **"lacked jurisdiction"** to overrule and preempt the Board's final and binding decision and its certified date of termination for April 30, 1999. Therefore, Petitioner believes that the Respondent simply **"jumped the gun and lacked legal authority and power"** to terminate Petitioner's employment when issuing its premature November 4, 1993 notice of termination. Because Illinois lawmakers had already **"locked-in employment"** (mutually exclusive) for any disabled employee receiving disability benefits and service credits concurrently from SURS under the SURS law of Illinois Pension Code, and mandated by SURS judicial decision under Provision 40

ILCS 5/15-107(e)(3). And **"contrary"** to the Respondent's claim, SURS law **mandates** that all disability benefits and service credits must cease on the date of termination. (R. C35) Therefore, under Illinois law it was **"legally impossible"** to terminate Petitioner's employment until after disability benefits had ended on April 21, 1999. (R. C36-37)

C. THE LOWER COURTS ERRED BY RULING THAT PETITIONER'S COMPLAINT IS BARRED BY THE ONE-YEAR STATUTE OF LIMITATIONS PROVIDED IN 745 ILCS 10/8-101.

Petitioner continues to believe that his cause of action is clearly for a **Termination Hoax along with the related Claims,** instead of a Wrongful Termination. Because under Illinois law a termination is precluded by the Board's decision while receiving disability benefits. Therefore, Petitioner believes that his cause of action accrued on October 4, 1999. And the same date that Petitioner received the Finalized Retirement Claim and **"new evidence"** provided by SURS September 30, 1999 decision. (R. C47-51) Because at this point, Petitioner had received the **"new evidence"** that was needed to prove that under Illinois law and the SURS law of Illinois Pension Code that Petitioner's employment was never terminated until actually April 30, 1999, instead of November 4, 1993 as had been **falsely claimed** by the Respondent in federal court. And that the Respondent then purposely perpetrated a **Termination Hoax** for 6-years at the taxpayers' expense to disguise and conceal its own mistake and wrongdoing for violating SURS June 7, 1990 final and binding decision approving Petitioner's

Disability Claim. Therefore, Petitioner believes that on October 4, 1999 all of the elements of his cause of action were present. See Lucey v. Law Offices of Pretzel & Stouffer, 301 Ill. App. 3d 349, 703 N.E.2d 473 (1998); Kramer v. Dirksen, 296 Ill. App. 3d 819, N.E.2d 1288 (1998). Petitioner filed his complaint on September 19, 2000. And is clearly within the one-year filing limitation provided in 745 ILCS 10/8-101. Petitioner never alleged that he was terminated on October 4, 1999, when he first received the finalized retirement claim, and therefore he fell within the one-year filing limitation. This statement is quoted in the Illinois Appellate Court's decision. However, it was made by the Respondent in its Reply to Petitioner's Response to the Motion to Dismiss. The Respondent then **falsely claimed** that Petitioner had alleged he was terminated on October 4, 1999. (R. C188)

D. THE LOWER COURTS ERRED BY IGNORING THAT SURS JUNE 7, 1990 FINAL AND BINDING DECISION MANDATED PETITIONER'S EMPLOYMENT.

Petitioner received SURS June 7, 1990 decision in the mail on June 11, 1990 approving the Disability Claim. And it then became a Final Administrative Decision on July 16, 1990 or 35 days later. SURS Final Administrative Decision was then subject to review by the courts under the Illinois Administrative Review law during the next 35 days. However, there was no Petition for Court Review and therefore SURS June 7, 1990 decision became **"the law and a final and binding decision"** on August 20, 1990. This Court ruled in 1956 that the ruling by a state administrative agency is the law of the state. [United

States v. Howard, 352 US 212] The Retirement Board was empowered by Illinois lawmakers to issue judicial decisions as a court. Therefore, Petitioner believes that then SURS June 7, 1990 final and binding decision had the same **"legal force"** as that of any court's judicial decision that had already become final and binding. Petitioner believes that then the Respondent was obligated to comply with SURS June 7, 1990 final and binding decision. (R. C24-26) However, the Respondent stated in its motion to dismiss that it is a separate entity from SURS, and therefore CCC was not obligated to comply with SURS June 7, 1990 final and binding decision. (R. C138-140) Petitioner believes that the lower courts erred by not acknowledging that the Respondent was indeed obligated to comply with SURS June 7, 1990 final and binding decision. And that Petitioner was still under SURS' jurisdiction until approved and released by the doctor to return to work. And that SURS June 7, 1990 decision mandated Petitioner's employment while receiving disability benefits under 40 ILCS 5/15-107(e)(3) which states in pertinent part: **A participant is considered an employee during the period he or she receives disability benefits under provisions of Section 15-152. (West 2000)**

However, each lower court decision is **"contrary"** to SURS June 7, 1990 final and binding decision, and also **"contrary"** to 40 ILCS 5/15-107(e)(3). In affirming, The Illinois Appellate Court relied upon case law to determine Petitioner's employment status. And then stated in its ruling that "under Illinois law, the SURS Board of Trustees had no authority to determine who was an 'employee' of the participating employers." Wargo v. State Universities Retirement System, 106 Ill. App. 3d 930 (1982) "Therefore,

whether Horton was employed by City Colleges was a decision to be made by City Colleges, and not SURS." Petitioner believes that the Wargo case is clearly distinguishable and is not relevant to the present disability case. And that the Wargo case cannot be used for court review to challenge or to overrule SURS June 7, 1990 final and binding decision because the statute of limitations had already expired on August 20, 1990. Therefore, Petitioner believes that the lower courts lacked jurisdiction to overrule and preempt SURS June 7, 1990 final and binding decision.

E. THE LOWER COURTS ERRED BY IGNORING THE RESPONDENT'S 6-YEAR FRAUDULENT SCHEME AGAINST THE TAXPAYERS TO COVER-UP ITS OWN MISTAKE AND WRONGDOING.

Petitioner believes that the lower courts erred by ignoring the **6-years of fraud** perpetrated against the taxpayers by the Respondent. Petitioner had alleged in trial court that $97,727.15 payments of disability benefits were **"contrary"** to a fraudulent provision included in SURS June 7, 1990 final and binding decision mandating return to work after disability ceases. And that the Respondent then promised to return health coverage if Petitioner would keep quiet and just stay home until all disability payments expired on April 21, 1999. However, this Court emphasized in *Marbury v. Madison* that one party cannot authorize another to break the law, and stated that even **"the President cannot authorize a secretary of state to omit the performance of those duties which are enjoined by law."** Petitioner clearly believes that each lower court decision is **"contrary"** to 40 ILCS

5/15-186 Fraud which states in pertinent part: **§ 15—186. Fraud. Any person who knowingly makes any false statement, or falsifies or permits to be falsified any record or records of this system, in any attempt to defraud the system, is guilty of a Class A misdemeanor. (West 2000)**

Petitioner eventually requested state and federal lawmakers to intervene after being unsuccessful in federal court and still unable to stop the fraud. (R. C58-59) Petitioner also reported this fraudulent scheme to each justice of the U.S. Supreme Court. (R. C60-61, 80) Many lawmakers were outraged and some were in a state of shock that Petitioner was staying home while the taxpayers were being defrauded for 6-years. Some Illinois lawmakers believed that it was SURS' fiduciary obligation to enforce its decision against CCC to stop this fraud. And some lawmakers were baffled that the federal court had not remanded the case back to state court. However, the lawmakers also failed to get the Respondent to resolve this issue and stop defrauding the taxpayers. Some lawmakers then urged Petitioner to go public with this fraud. And that Petitioner should report this fraud to the proper criminal authorities, including the FBI and the U.S. Justice Department. However, Petitioner believes that it would be improper and prejudicial to his case to report these criminal violations to other authorities before the Court had resolved the complaint, or advised Petitioner to do so. (R. C120)

F. *THE RESPONDENT SHOULD BE EQUITABLY* ESTOPPED FROM EVEN ASSERTING THE STATUTE OF LIMITATIONS.

The Respondent clearly made a "terrible mistake" by issuing its premature November 4, 1993 notice of termination. And then the Respondent compounded the problem by perpetrating a **Termination Hoax** for 6-years at the taxpayers' expense to disguise and conceal that same mistake. And its own wrongdoing for violating SURS June 7, 1990 final and binding decision approving Petitioner's Disability Claim. Estoppel is an equitable doctrine that is invoked to effectuate justice by precluding a party from benefiting from its own wrongdoing, *Tegeler v. Industrial Commission*, 173 Ill. 2d 498 (1996). Fraudulent intent is not necessary to an estoppel, for although fraud is an essential element, it is sufficient that a fraudulent or unjust effect results from the conduct of the Defendant. *Cessna v. Montgomery* 63 Ill. 2d 71 (1996)

However, in the present case the Respondent's intent was indisputably fraudulent, and the result was also fraudulent and unjust. The taxpayers were defrauded $97,727.15 for 6-years because of this mistake and cover-up by the Respondent. And Petitioner's life and career were destroyed because the Respondent was just too proud and embarrass to admit and correct an obvious violation of SURS June 7, 1990 final and binding decision. And especially after Petitioner had already withdrawn all demands for any monetary damages just to return to work quickly and save Petitioner's career. Petitioner's life continues to be at risk with the loss of health coverage and medical treatments. Petitioner has already spent almost 11-years of his life and tens of thousands of dollars in

expenses while trying to resolve the Respondent's own reckless mistake after the Retirement Board failed to do so. The Respondent seems to admit its own wrongdoing and this fraud in its reply to Petitioner's response to its motion to dismiss and then states that "its termination of November 4, 1993 could be unlawful, and SURS may not have recognized or been aware of it." (R. C188-189) Nevertheless, the Respondent now wants to benefit from its own mistake and fraud, and its intentional wrongdoing. The court has "consistently" toll the statute of limitations when **fraud** is involved in a case. Petitioner believes that **equity** should now intervene to preclude the statute of limitations as an affirmative defense, and to **protect the Constitution.**

CONCLUSION

Based on the foregoing reasons, Petitioner Professor Robert Horton prays that this Honorable Court to grant writ of certiorari.

Respectfully submitted,

Prof. Robert Horton

PROFESSOR ROBERT HORTON
5855 N. Sheridan Rd., Apt. 21H
Chicago, Illinois 60660-3847
(773) 561-6671
Petitioner, Pro se

December 30, 2002

APPENDIX A

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

[FILED MAY 10, 2002]

Case No. 1-01-1535

ROBERT HORTON,)
Plaintiff-Appellant,)
)
v.)
)
CITY COLLEGES OF CHICAGO, Board of Trustees)
of Community College District No. 508,)
Defendant-Appellee.)

ORDER

Plaintiff Robert Horton appeals pro se from an order of the circuit court dismissing his complaint with prejudice pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code). 735 ILCS 5/2-619 (a)(5) (West 2000). Horton contends on appeal that the trial court erred in determining that the action was barred by the applicable statute of limitations because he was still receiving

disability benefits in the capacity of an "employee" after his employment was terminated.

Horton began his employment with the defendant, City Colleges of Chicago, Board of Trustees of Community College District No. 508 (City Colleges), in 1977. The parties dispute the date of his termination. Following Horton's discharge, he filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") in December 1993. In January 1995, the EEOC dismissed the charges of discrimination ,and Horton subsequently filed a complaint in the federal court.

The facts of this case are adequately set forth in the federal court's disposition. Horton v. Board of Trustees of Community College District No. 508, 95 C 2346 (N.D. Ill. 1996). As a result, only the facts relevant to this appeal will be repeated. In 1989, City Colleges granted Horton an extended illness leave due to a nervous disorder and ordered him to return to work on May 12, 1990. In March 1990, two months prior to his scheduled return to work, Horton applied for disability benefits through the State Universities Retirement System ("SURS"). City Colleges granted Horton's request for benefits and granted a second sick leave period, scheduled to end on May 11, 1991. In 1991, City Colleges granted a third sick leave period; Horton was rescheduled to return on May 9, 1992.

In October 1992, SURS recertified Horton as disabled and approved disability payments through 1995. Although SURS had extended Horton's "disability status" until 1995, the City Colleges of Chicago Rules required each employee to submit an application for illness for each

leave period. When Horton's third extension neared its end, City Colleges scheduled Horton to begin teaching in the fall 1992 semester. However, Horton neither returned to work nor requested a fourth extension of his leave. As a result of his failure to report to work, City Colleges requested that Horton submit a fourth extended leave of absence form together with a physician's statement in October 1992. Horton did not reply.

In January 1993, City Colleges notified Horton that he had to complete an application for extended leave or else risk termination. Horton filed the application in February 1993, but did not attach a current physician's statement. By fall 1993, Horton had not supplied a current physician's statement, nor had he reported to teach. On October 28, 1993, the president of Truman College, where Horton was to teach, recommended that the chancellor terminate Horton for his failure to both submit a physician's statement and to attend disciplinary conferences. City Colleges scheduled a final disciplinary hearing to determine whether just cause existed to terminate Horton. When Horton failed to appear at the November 4, 1993 final hearing, City Colleges found just cause to discharge him.

In the federal court complaint, Horton alleged that City Colleges unlawfully terminated his employment due to his race and disability in violation of federal law. Horton further alleged state violations of a collective bargaining agreement and the Illinois pension Code (40 ILCS 5/15-101 (West 2000)). With respect to the last claim, Horton alleged that he was still considered an "employee" during the time he was receiving disability benefits under

SURS. In granting summary judgment in favor of the Board, the district court found no evidence supporting this claim. Horton v. Board of Trustees of Community Colleges District No. 508, No. 95 C 2346 (N.D. Ill. 1996). The Seventh Circuit Court of Appeals affirmed the district court's ruling, adding that SURS had no authority to determine who was an "employee" of the participating employers. Horton v. Board of Trustees of Community College District 508, 107 F. 3d 878 (7th Cir. 1997).

On September 19, 2000, Horton filed a 54-count pro se complaint in the circuit court seeking $50 million in compensatory damages and $500 million in punitive damages against City Colleges. In his complaint, Horton alleged that City Colleges was prohibited from terminating his employment in light of a decision issued by SURS on June 7, 1990 approving his claim for disability benefits. Horton further alleged that City Colleges and SURS violated the Illinois Pension Code and the equal protection clause of both the United States Constitution (U.S. Const., amend. XIV) and the Illinois Constitution (Ill. Const. 1970, art. I, § 2), by "forcing Plaintiff to retire prematurely." The complaint also alleged that City Colleges and SURS violated his fifth amendment right against self-incrimination by "conspiring to force [him] to continue receiving disability benefits fraudulently until all the benefits had expired on April 21, 1999." Significantly to this appeal, Horton alleged in his complaint that he had "new evidence" which would "irrefutably" prove that his termination by City Colleges on November 4, 1993, violated the Illinois Pension Code. With respect to this claim, Horton alleged that SURS did not use the November 4, 1993, termination date, but instead used April 30, 1999,

as the date when his disability benefits expired. According to the complaint, Horton had been "terminated by [City Colleges] on November 4, 1993." However, Horton alleged that it was "legally impossible" for SURS to recognize this termination date when Horton "was still receiving disability benefits and still under SURS Jurisdiction."

Horton attached 32 exhibits in support of his complaint, including the June7, 1990 letter from SURS approving Horton's claim for disability benefits. One of the exhibits was a letter dated October 28, 1993, from the chancellor, informing Horton that he reviewed the charges brought against him and agreed with the recommendation from the president of Truman College to terminate Horton. Another exhibit was the formal "resolution" passed by City Colleges, dated November 4, 1993, which terminated Horton's employment. A letter from the chancellor, dated November 5, 1993, informing Horton that his termination was approved, was also attached to the complaint. Finally, Horton attached a letter he wrote to former President Clinton, in which he stated that he "was fired on November 4, 1993."

City Colleges filed a motion to dismiss Horton's complaint pursuant to sections 2-615 (735 ILCS 5/2-615 (West 2000)) and 2-619 (735 ILCS 5/2-619(a)(5) (West 2000) of the Code, based on the following three grounds. First, City Colleges alleged that Horton failed to plead a cause of action upon which relief could be granted. Second, the motion alleged that Horton's action was barred by the principle of res judicata based on the prior federal court ruling. Finally, City Colleges alleged that Horton's action was time-barred because it was not commence within the

statute of limitations period prescribed by section 8-101 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/8-101 (West 2000) . The motion was supported by the prior federal district court decision in Horton v. Board of Trustees of Community Colleges District No. 508, No. 95 C 2346 (N.D. Ill. 1996), and the Seventh Circuit Court of Appeals decision in Horton v. Board of Trustees of Community College District 508, 107 F. 3d 873 (7th Cir. 1997).

Horton responded, alleging that he was "never terminated on November 4, 1993." He further alleged that the present cause of action was not for wrongful termination, but rather a "termination hoax." Horton alleged that he had purported "new evidence," including a letter dated September 30, 1999, in which SURS approved his application for his retirement annuity. Furthermore, the certification of retirement annuity attached to Horton's complaint indicated that his "years of service credits" were "22.0000." Horton also pointed to a letter dated October 28, 1999, in which SURS revised his retired claim and reflected Horton's years of service credits as "21.7500" years. Finally, Horton argued that his termination report showed the actual date of termination as November 4, 1993; however, this date was crossed out and replaced with the handwritten date of April 30, 1999. Horton argued that this evidence was "completely contrary" to the termination date of November 4, 1993. Finally, Horton alleged that he was terminated on October 4, 1999, when he first received the finalized retirement claim, and therefore he fell within the one-year filing limitation.

City Colleges replied that it was apparent from Horton's complaint and supporting documents that he acknowledged his termination date of November 4, 1993. Furthermore, City Colleges alleged that the fact that SURS may not have been aware of the termination date did not mean that Horton's termination did not occur on November 4, 1993.

The trial court subsequently granted City Colleges motion to dismiss Horton's complaint with prejudice. Among the reasons the court stated that Horton's claims were barred by the one-year statute of limitations. 745 ILCS 10/8-101 (West 2000).

On appeal, Horton contends that the trial court erred, as a matter of law, granting City Colleges' motion to dismiss because a question of fact remained as to the actual date of Horton's termination.

A defendant may move for the involuntary dismissal of a claim under section 2-619 of the Illinois code of Civil Procedure where the cause of action is barred by the applicable statute of limitations. 735 ILCS 5/2-619(a)(5) (West 2000). A section 2-619 motion to dismiss should be granted only where it is clearly apparent that the plaintiff can prove no set of facts that would entitle him to recover. Wood v. Village of Grayslake, 229 Ill. App. 3d 343, 348 (1992). Our review of a section 2-619 dismissal is de novo. Shanklin v. Hutzler, 294 Ill. App. 3d 659, 665 (1997).

Horton does not contest the fact that the applicable limitations period was one year under the Tort Immunity

Act. Horton argues he did not discover the termination report, finalized retirement claim and revised retirement claim until October 4, 1999. According to Horton, these documents constituted "new evidence" that would show that he was not terminated on November 4, 1993. The discovery rule delays the commencement of the statute of limitations until the date the plaintiff knew or reasonably should have known that he was injured and the injury was wrongfully caused. Jackson Jordon, Inc. v. Leydig, Voit & Mayer, 158 Ill. 2d 240, 249 (1994). "while the question of when a plaintiff knew of should have known of his or her injury and that his or her injury was wrongfully caused is typically one for the jury, 'where there are undisputed facts from which only one conclusion may be drawn, the question will be one for the court." Ericksen v. Village of Willow Springs, 279 Ill. App. 3d 210, 216 (1995), quoting Sille v. McCann Construction Specialties Co., 265 Ill. App. 3d 1051, 1055-56(1994); See also Jackson Jordan, 158 Ill. 2d at 250 (The applicability of the discovery rule is ordinarily a question of fact, unless the undisputed facts allow for only one conclusion).

In this case, Horton's own documents attached to his complaint show that he was apprised of his termination from City Colleges in November 1993, nearly seven years before he filed the instant complaint. City Colleges passed a resolution to terminate Horton's employment for cause on November 5, 1993. The chancellor then wrote Horton a letter on November 5, 1993, stating that City Colleges had approved Horton's termination. The fact that Horton filed a complaint with the EEOC in December 1993, and then in federal court, further supports the fact that Horton knew he had been

terminated. Moreover, Horton acknowledged in his complaint and in a letter to former President Clinton that he was terminated by City Colleges on "November 4, 1993."

Horton relies on purported "new evidence" consisting of a termination report and his retirement claims, in arguing that under the Illinois Pension Code, it was "legally impossible" to terminate his employment on November 4, 1993, because he was still receiving disability payments under SURS. Horton's assumption that City Colleges was unable to terminate his employment is simply unfounded. Under Illinois law, the SURS Board of Trustees had no authority to determine who was an "employee" of the participating employers. Wargo v. State Universities Retirement System, 106 Ill. App. 3d 930 (1982). Therefore, whether Horton was employed by City Colleges was a decision to be made by City Colleges, and not SURS. The pleadings and exhibits in this case unequivocally show that Horton was terminated on November 4, 1993. Because we find that no issue of material fact existed as to Horton's date of termination, the trial court properly ruled as a matter of law that Horton's claims were time-barred by the one-year statute of limitations.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

QUINN, J., with GREIMAN, J., and REID, J., concurring.

APPENDIX B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, LAW DIVISION

[Filed March 22, 2001]

Case No. 00 L 10759

PROFESSOR ROBERT HORTON,
Plaintiff,

vs.

CITY COLLEGES OF CHICAGO,
Defendant.

ORDER

This matter comes before this Court on Defendant Board of Trustees of Community College District No. 508's (hereinafter "City Colleges") Motion to Dismiss Professor Robert Horton's Complaint pursuant to sections 2-615 and

2-619 of the Illinois Code of Civil Procedure. As set forth further herein, Defendant's Motion to Dismiss pursuant to section 2-619(a)(5) is **Sustained**, with prejudice.

Statement of Facts

Plaintiff has filed a 54 count complaint seeking $50 million in compensatory damages and $500 million in punitive damages against Defendant City Colleges. Plaintiff contends that Defendant wrongfully terminated him and alleges violations of a decision issued by the Board of Trustees of the State Universities System (hereinafter "SURS"), of the Illinois pension Code, of the Equal Protection Clause and of the Fifth Amendment. Previously, Horton had filed a complaint in the U.S. District Court for the Northern District of Illinois, alleging violations of the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Collective Bargaining Agreement, and the Illinois Pension Code. The District Court granted summary judgment in favor of Defendant, noting that Horton's allegations were without evidentiary support. Plaintiff appealed that ruling to the U.S. Court of Appeals for the Seventh Circuit, which affirmed the District Court's ruling.

Analysis

Defendant's 2-615 Motion to Dismiss

When considering a section 2-615 Motion to Dismiss, pleadings are to be liberally construed so as to do justice between the opposing parties. See Abbott v. Amoco

Oil Co v., 249 Ill. App. 3d 774, 779, 619 N.E. 2d 789, 793 (2d Dist. 1993). All well pleaded facts within the four corners of the complaint are regarded as admitted and true, together with all reasonable inferences drawn in the light most favorable to the plaintiffs. See id. A complaint should be dismissed under section 2-615 for failure to state a cause of action only when it clearly appears that no set of facts can be proved under the pleadings which entitle the plaintiff to relief. See Lake County Grading Co. of Libertyville, Inc. v. Advance Mechanical Contractors, 275 Ill. App. 3d 452, 458, 654 N.E. 2d 1109, 1112 (2d Dist. 1995). While a section 2-615 motion to dismiss admits all well-pleaded facts as true, it does not admit conclusions of law or factual conclusions. See id. When ruling on a section 2-615 Motion to Dismiss, a court may not consider affidavits, the products of discovery, documentary evidence not incorporated into the pleadings as exhibits, testimonial evidence or other evidentiary materials. Elson v. State Farm & Cas. Co.., 295 Ill. App. 3d 1, 6, 691 N.E. 2d 807 (1st Dist. 1995).

The liberal construction provisions do not apply where the complaint fails to allege facts sufficient to state a cause of action. See Knox College v. Celotex Corp., 88 Ill. 2d 407, 409, 430 N.E. 2d 976, 979 (1981). Although the defendant's motion to dismiss admits all well-pleaded facts, the pleadings are to be construed strictly against the pleader. See id. Notice pleading is not sufficient under the Illinois Code of Civil Procedure. See id.

Defendant argues that Plaintiff's allegations fail to state a violation of the SURS decision to grant disability benefits. According to plaintiff's complaint, SURS issued a

decision on June 7, 1990 approving his claim for disability benefits, and because of that decision, Defendant was prohibited from terminating his employment. Defendant asserts that SURS does not have the power to compel City Colleges to retain anyone as an employee. Notwithstanding, Defendant contends that Plaintiff's assertion that the SURS' decision had a binding effect on Defendant is un supported by fact or law.

As to Plaintiff's allegation that Defendant violated the Illinois Pension Code, City Colleges argues that Plaintiff fails to state a legally cognizable claim because the Code is devoid of any provisions prohibiting an employer from discharging an employee while he is receiving disability benefits. Further, as to Plaintiff's claim that Defendant breached a contract, the SURS decision, by terminating him, Defendant points out that no contract ever existed between City Colleges and SURS, nor was City Colleges a party to that decision.

As to Plaintiff's contentions that Defendant violated the Equal Protection Clause by firing him, Defendant argues that Plaintiff has failed to allege that he was discriminated against because he was a member of a protected class.

Plaintiff claims a violation of the Fifth Amendment because City Colleges conspired to force him to continue to receive disability benefits to which he was not entitled. Defendant argues this claim must be dismissed because it relies on conclusory statements and does not specially indicate how Defendant was involved in any conspiracy. Moreover, Defendant contends that this claim must fail

because no criminal proceedings have alleged to have occurred.

Plaintiff responds that he is not now suing for a wrongful termination, but instead is suing the Defendant for "perpetuating a terminating hoax" against the Plaintiff since November 4, 1993 to disguise and conceal its wrongdoing. Further, Plaintiff claims he is suing for its continued disability violation of the SURS decision and for the cover-up of this violation. Plaintiff fails to respond to Defendant's Motion and does not explain how he fulfills Illinois pleading requirements within the 54 counts of the complaint he has filed.

Defendant's 2-619 Motion to Dismiss

When proceeding under a section 2-619 motion, the movant concedes all well-pleaded facts set forth in the complaint, but does not admit conclusions of law. See Employers Mutual Co v. Skilling, 256 Ill. App. 3d 567, 568, 629 N.E. 2d 1145, 1146 (2d Dist. 1994). A section 2-619 motion to dismiss should be granted only when it raises affirmative matter which negates the plaintiff's cause of action completely or refutes critical conclusions of law or conclusion of material, but unsupported fact. See id. Upon ruling on a Section 2-619 motion, the court must deny the motion if there is a material and genuine disputed questions of facts. 735 ILCS 5/2-619©; See also Samansky v. Rush-Presbyterian-St. Luke's Medical Ctr., 208 Ill. App. 3d 377, 383, 567 N.E. 2d 386, 390 (1st Dist. 1990).

Affidavits and supporting evidence are necessary only where the defect does not appear on the face of the pleading. See Meyers v. Rockford Systems, Inc., 254 Ill. App. 3d 56, 60, 625 N.E. 2d 916, 920 (2d Dist. 1993). A 2-619 motion does not refute the complaint, but admits the well-pleaded facts in the complaint and presents an affirmative matter that defeats or avoids the claim. See Stone v. McCarthy, 158 Ill. App. 3d 569, 572, 511 N.E. 2d 780, 781 (1st Dist. 1987). Because this motion admits the truth of the well- pleaded facts, the evidentiary material cannot contradict the pleadings. See id

Res Judicata

City Colleges argues that the judgment of the U.S. District Court in favor of the Defendant bars this action through the application of the doctrine of res judicata. According to Defendant, in this complaint, Plaintiff asserts the same essential facts as he did in his first complaint filed in the U.S. District Court. Though Plaintiff has added new theories to this complaint not alleged in his first complaint, Defendant contends that those new theories arise out of the same group of operative facts as those that supported his previously alleged theories of recovery.

A prior judgment may have preclusive effects in a subsequent action under the doctrine of res judicata. See Housing Authority for LaSalle County v. Young Men's Assoc. of Ottawa, 101 Ill. 2d 246, 251, 461 N.E. 2d 959, 961 (1984). The doctrine of res judicata provides that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and as to them, constitutes an absolutes bar

to a subsequent action involving the same claims, demand or cause of action. See id. When it is established that a claim is barred under the doctrine of res judicata, it is conclusive not only as to every matter which was offered to sustain or defeat the claim or demand, but also as to any other matter which may have been offered for that purpose. See id. Res judicata applies when there is: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of the parties; and (3) an identity of causes of action. See Horton v. Caterpiller, Inc., 260 Ill. App. 3d 150, 152, 632 N.E. 2d 1061, 1063 (3rd Dist. 1994). Privity exists between parties who adequately represent the same legal interests. See Schnitzer v. O'Connor, 274 Ill. App. 3d 314, 326 653 N.E. 2d 825, 833 (1st Dist. 1995). It is the identity of the interests that controls in determining privity, not the nominal identity of the parties. See id. The test for determining whether there is an identity of the causes of action is whether they are based on the same set of operative facts or whether the same evidence would be necessary to sustain both actions. See Thorlief Larsen & Son, Inc. v. PPG Industries, Inc., 177 Ill. App. 3d 656, 661, 532 N.E. 2d 423, 426 (2nd Dist. 1988).

Plaintiff responds that the federal court proceeding involved the wrongful termination of his employment and this lawsuit involves this alleged termination hoax.

Statute of Limitations

Lastly, Defendant argues that Plaintiff's cause of action is barred by the relevant statute of limitations enunciated in the Local Governmental and Governmental Employees Tort Immunity Act (hereinafter "Act").

According to the Act, any civil action against a local entity for any injury must be filed within one year from the date the injury or within one year of the accrual date. 745 ILCS 10/8-101. Defendant avers that it is covered by the Act and that Plaintiff's cause of action would have accrued in November 1993, when his employment was terminated. Because Plaintiff did not file this cause of action until October 5, 2000, Defendant maintains that Plaintiff's claim is barred and must be dismissed.

Plaintiff claims that this cause of action did not accrue until October 4, 1999, which was when he received his finalized retirement claim from SURS. Plaintiff argues that this claim provides the new evidence that he needs to prove a cause of action for what he calls a termination hoax, namely that he was never terminated on November 4, 1993.

It is not exactly clear to this Court what Plaintiff's basis is for this alleged "termination hoax." In looking to Plaintiff's own exhibits numbered 5 through 9 it is evident why Defendant terminated Plaintiff from his position with City Colleges. Exhibit 5, a memo from the President of Truman College to Chancellor Ronald Temple, explains that Plaintiff secured an extended leave of absence on September 18, 1989 and he was expected to return on August 20, 1990. Then Defendant granted Plaintiff another leave of absence based on a SURS Statement of Disability. On February 15, 1993, Horton submitted another application for an extended leave of absence without a current copy of his attending physician's statement that he was under a physician's care. Defendant had directed Plaintiff numerous times to submit an updated statement

from his physician, which he never provided, and he had been instructed to attend disciplinary conference hearings, which are provided for under the faculty collective bargaining agreement, in July 28, August 16, and October 19, 1993, none of which he attended. The purpose of the disciplinary proceedings was to determine whether the Plaintiff should be recommended for termination. Plaintiff's Exhibit 6, the October 28, 1993 letter from Chancellor Temple to Horton, explained that Plaintiff did not attend the disciplinary hearings and also informed Plaintiff that he concurred with the administration of Truman College that Plaintiff should be terminated with cause and that recommendation would be made to Defendant at the November 4, 1993 regular meeting. Exhibit 7 of Plaintiff's complaint is the Board's Resolution to terminate Plaintiff. In the Resolution it is noted that Plaintiff was presented with written charges and with the opportunity to appear and participate in the disciplinary proceedings.

Notwithstanding all of Defendant's arguments, this Court finds that Plaintiff's claims are barred by the one year statute of limitations provided by the above referenced Act. Defendant clearly falls within the Act's provisions, as it is a community college board, one of the local public entities listed in the Act. 745 ILCS 10/1-206. Furthermore, Horton was apprised of his termination from City Colleges in November of 1993, over seven years ago. He knew of whatever injuries he is now claiming years ago, as is indicated by the federal lawsuit he instituted against Defendant. This Court finds that the statute of limitations provided in 745 ILCS 10/8-101 applies here and Plaintiff's claims against Defendant are barred. Therefore,

Defendant's Motion to Dismiss pursuant to section 2-619(a)(5) is Sustained, with prejudice.

JUDGE LORETTA C DOUGLAS
MAR 22 2001
Enter: CIRCUIT COURT 290

APPENDIX C

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
Supreme Court Building
Springfield, Illinois 62701

October 2, 2002

Professor Robert Horton
5855 N. Sheridan Rd., Apt. 21H
Chicago, IL 60660-3847

No. 94146 – Robert Horton, petitioner, v. City Colleges of Chicago, etc., respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 24, 2002.

APPENDIX D

STATE UNIVERSITIERS RETIREMENT SYSTEM
50 Gerty Drive
P.O. Box 2710 – Station A
Chicago, Illinois 60660

June 7, 1990

Mr. Robert Horton
5855 North Sheridan Road #21-H
Chicago, Illinois 60660

RE: S.S. #320-34-3035

Dear Mr. Horton:

The Board of Trustees of the State Universities Retirement System (SURS) has approved your claim for disability benefits.

The Law governing SURS provides that disability benefits shall begin upon the termination of the payment of salary or sick leave benefits by the employer or the 61st day after the occurrence of the disability, whichever is

later. SURS has been advised that you became disabled on September 5, 1989 and that you received earnings through March 21, 1990. accordingly, benefits from SURS began as of April 6, 1990.

Under the Law governing SURS, the maximum total disability benefits which you could receive is $153,208.04. You will be paid a disability benefit of $1,790.67 per month for 9 months of each year until November 22, 1999. if you continue to be disabled until that date.

We wish to emphasize that SURS Law will not permit payment of disability benefits after the date disability ceases. Consequently, it is important that at the time of each examination, you ask your examining physician whether, in his opinion, you continue to be disabled. If his answer is no. You should report this fact to your employer and SURS immediately so you may be returned to employment as soon as possible. Otherwise, several days may elapse between the time disability benefits cease and your return to work. The Medical Director has indicated that a request for medical reports will be initiated May 6, 1991 if you are still disabled on that date.

If you qualify for benefits under any State or Federal Worker's Compensation or Occupational Diseases Acts for any period for which disability benefits are payable by SURS, the disability benefits paid by the SURS will be reduced by an amount equivalent to such Worker's Compensation or Occupational Diseases payment.

If during any month, you earn compensation from any source for personal or professional services in excess of the monthly disability benefit, you should notify SURS immediately, because your disability benefit for that month must be reduced by the excess earnings.

Within the next 10 days you will receive our check in the amount of $3,312.70. less any optional insurance premiums or Federal income tax deductions, in payments of disability benefits due you at this time from SURS covering the period April 6, 1990 through May 31, 1990.

REVIEW OF TRUSTEES' DECISION

If you do not agree with the amount of service credit, contributions, retirement or other benefits outlined in this letter, you may file a Petition for Written Appeal or a request for a Hearing with the Executive Director of SURS at the address shown above. This Petition or Request must be filed within 35 days following the date that you receive this letter. If you fail to file a Petition for Written Appeal or Request for a Hearing within 35 days, the decision of the Board of Trustees will be considered a final administrative decision at the end of that 35-day period. Final administrative decisions are subject to review by the courts under the Illinois Administrative Review Law. That Law allows court review of a final administrative decision, only if a Petition for Review is filed with the court within 35 days after the decision becomes final.

TAXABILITY OF DISABILITY BENEFITS

Disability benefits are subject to Federal income taxation. You may be able to take a credit against income tax if you are a qualified individual. The amount of the credit is based on your adjusted gross income, filing status, age, and if you are married, your spouse's age. For further information, consult IRS Publication 524, "Credit For The Elderly And The Permanently And Totally Disabled."

Your benefits is subject to Federal income tax withholding unless you elected not to have withholding apply. You may notify SURS whenever you wish to change or discontinue your withholding. If sufficient taxes are not withheld, you may incur interest and penalty on the amount of the underpayment. A W-2P Form reflecting disability payments and any withholding will be mailed to you in late January of each year.

Beginning with the tax year in which you attain the age of 65, you will report your disability benefits under annuity rules. Your contributions to SURS, upon which taxes have been paid, will be recovered tax free prorated over your expected lifetime. SURS will provide you with the necessary information at the appropriate time.

No benefits payable by SURS are subject to Illinois income tax. The amount reported as taxable income on your federal return should be entered as a subtraction on your Illinois return. To support this deduction, attach a photocopy of the front page of your Federal 1040 to your Illinois income tax return.

Sincerely yours,

S/ William B. Jackson, Jr.

William B. Jackson, Jr.
Deputy Director – Benefit Services

WBJ:pkc
Enc.
cc: Ms. Norine Foley
Director of Insurance and Pensions
City Colleges of Chicago
226 West Jackson Boulevard
Chicago, Illinois 60606-6998

APPENDIX E

State Universities Retirement System of Illinois
1901 Fox Drive
Champaign, IL. 61820

September 30, 1999

Mr. Robert Horton
5855 N. Sheridan Rd Apt 21H
Chicago, IL 60660

RE: Finalization of Retirement Claim
S.S. #320-34-3035

Dear Mr. Horton:

The Board of Trustees of the State Universities Retirement System (SURS) has approved your Application for Retirement Annuity. Please refer to the enclosed Certification of Retirement Annuity and computer printout for detailed information regarding the effective date of your annuity, your contributions, the calculation of the annuity, and the amount payable.

If you return to employment for an employer covered by SURS within 60 days after your retirement, your retirement annuity will be canceled, regardless whether

the employment is full-time or part-time. If the annuity is canceled, all annuity payments which may have been made must be refunded to SURS.

If you retired prior to age 60, and return to employment in a position covered by SURS, the State Employees' Retirement System, or the State Teachers' Retirement System, your earnings will be restricted to the amounts shown on the enclosed Certification of Retirement Annuity.

If you retired on or after age 60, unless you retired under the Reciprocal Act and your earnings are restricted by another Illinois retirement system, your earnings limit will apply only to compensation received from an employer covered by SURS.

If your annuity is also based on credit in another Illinois retirement system, you should ask a representative of that system to explain their post- retirement employment restrictions.

REVIEW OF TRUSTEES' DECISION

You may file a written request for review with the Associate Executive Director of SURS at the address shown above if you believe this decision is incorrect. This request must be filed within 30 days following the date you receive this letter. If you fail to file a request within 30 days, the decision will become final because you elected not to seek administrative review of the decision.

BREAKDOWN OF RETIREMENT ANNUITY

A SURS check in the amount of $1,262.88 has been sent to your bank today and consists of the followings:

MONTH	GROSS	INSURANCE	FIT	NET DUE
May	$1,241.00	$0.00	$116.36	$1,124.64
June	$1,241.00	$0.00	$116.36	$1,124.64
July	$1,241.00	$0.00	$116.36	$1,124.64
August	$1,241.00	$0.00	$116.36	$1,124.64
September	$1,241.00	$0.00	$116.36	$1,124.64
October	$1,241.00	$0.00	$116.36	$1,124.64
Total				$6,747.84

Previously paid:

MONTH	GROSS	INSURANCE	FIT	NET DUE
May	$993.00	$0.00	$78.84	$914.16
June	$993.00	$0.00	$78.84	$914.16
July	$993.00	$0.00	$78.84	$914.16
August	$993.00	$0.00	$78.84	$914.16
September	$993.00	$0.00	$78.84	$914.16
October	$993.00	$0.00	$78.84	$914.16
Total				$5,484.96

Check amount $6,747.84-$5,484.96=$1,262.88

Your Survivor Refund was paid in the following manner: a check in the amount of $7,719.25 was sent to your home.

TAXABILITY OF RETIREMENT ANNUITY

Your contributions prior to January 1, 1981, plus any payments you made to purchase service credit and the Early Retirement Option, represent your cost of annuity, the amount upon which you have already paid taxes.

You will receive a portion of your benefit tax free for the next 310 months as a recovery of your cost of annuity. The recovery period is determined by tables issued by the Internal Revenue Service based upon your age when benefits begin. Your cost of annuity is $4,669.50. Therefore, the tax free amount is $15.06 (cost of annuity divided by months to recover*).

Your tax free recovery is limited to your cost of annuity. If you should die before recovering all of the cost of your annuity, the remaining amount will be recovered by:

A. Your spouse through survivors benefits, or

B. If you have no eligible survivor or at your survivor's death, the full amount not recovered is deducted on the final tax return.

The taxable portion of your benefit is subject to Federal income tax withholding unless you elected not to have withholding apply. You may notify SURS whenever you wish to change or discontinue your withholding. If sufficient tax is not withheld, you may incur interest and

penalty on the amount of the underpayment. A 1099R Form reflecting annuity payments and any withholding will be mailed to you in late January of each year.

No benefits payable by SURS are subject to Illinois income tax. The portion of this benefit you report as taxable on your Federal return should be entered as a subtraction on your Illinois return. To support this deduction, attach a photocopy of the front page of your Federal 1040 to your Illinois return.

Retirement Income Tax Credit – Tax Credit For The Elderly

Although you must include your annuity as income on your tax return, as indicated above, you may be able to take a credit against income tax if you are a qualified individual. The amount of the credit is based on your adjusted gross income, filing status, age and if you are married , your spouse's age. For further information, consult IRS Publication 524, "Credit For The Elderly And The Permanently And Totally Disabled."

Keep this letter. You will need this information in completing your tax return in future years.

Sincerely yours,

S/ Rhonda M. Napper

Rhonda M. Napper

Member Service Representative

RMN:srs
Enclosures
cc: Ms. Norine Foley
Director, Employee Benefits
City Colleges of Chicago
226 West Jackson Boulevard
Chicago, Illinois 60606-6998

*This exclusion was calculated using the IRS Safe Harbor method.

STATE UNIVERSITIES RETIREMENT SYSTEM
1901 Fox Drive
Champaign, IL 61820

CERTIFICATION OF RETIREMENT ANNUITY

Name: Mr. Robert Horton
S.S.#: 320-34-3035 Age: 58 Claim#: 1230553

Position: Academic
Employer: City Colleges of Chicago

Years of Service Credits: 22.0000

Date Retirement Annuity Begins: 05/01/1999

Average Earnings - : $32,655.11 per year

Retirement Formula: Money purchase
Monthly Annuity Based on Above Formula: $1,241.00

Subject to Automatic Annual Increases of $24.82 per month beginning on 01/01/2000 and 3 percent compounded increase each January thereafter. The increase is applicable to the retirement annuity only.

Retirement Earnings Limitations:

Highest Annual Earnings:	$ .00
Less Annual Annuity:	$ .00
Monthly Earnings Limitations:	$ 1,241.00

APPENDIX F

State Universities Retirement System of Illinois
1901 Fox Drive
Champaign, IL. 61820

October 28, 1999

Mr. Robert Horton
5855 N. Sheridan Rd. Apt 21H
Chicago, IL 60660-3847

RE: Revision of

Retirement Claim

S.S. #320-34-3035

Dear Mr. Horton:

A revision has been completed on the monthly retirement annuity payable to you by the State Universities Retirement System. Enclosed is a revised Certification of Retirement Annuity which you should substitute for the similar document previously supplied.

The effect of this revision increases your monthly base annuity from $1,241.00 to $1,302.12. Enclosed is our check in the amount of $1,469.64 in payment of the additional retirement annuity due you for the period April through November.

Also enclosed is a computer printout indicating the correct amount of your monthly retirement annuity, as well as information concerning the deductions currently being taken.

Sincerely yours,

S/ Julia A. Jones

Julia A. Jones
Member Service Representative

Enclosures

cc: Norine Foley
Director, Employee Benefits
City Colleges of Chicago
226 West Jackson Boulevard
Chicago, IL 60606-6998

STATE UNIVERSITIES RETIREMENT SYSTEM
1901 Fox Drive
Champaign, IL 61820

CERTIFICATION OF RETIREMENT ANNUITY

Name: Mr. Robert Horton
S.S.#: 320-34-3035 Age: 58 Claim#: 1230553

Position: Academic
Employer: City Colleges of Chicago

Years of Service Credits: 21.7500

Date Retirement Annuity Begins: 04/01/1999

Average Earnings - : $32,655.11 per year

Retirement Formula: General Formula
Monthly Annuity Based on Above Formula: $1,302.12

Subject to Automatic Annual Increases of $29.30 per month beginning on 01/01/2000 and 3 percent compounded increase each January thereafter. The increase is applicable to the retirement annuity only.

Retirement Earnings Limitations:

Highest Annual Annuity:	$	.00
Less Annual Annuity:	$	.00
Monthly Earnings Limitations:	$	1,302.12